

1. **During your tenure as USA, did DOJ officials ever discuss with you or cite you for performance problems?** Answer: No, save for any minor observations or recommendations that might appear in either of the EARS evaluations conducted during my tenure.
2. **When a highly respected USA is removed abruptly and without explanation, what impact does that have on other USAs and the AUSAs in your office?** Answer:
Normal changes in leadership occur when a presidential administration is changed over and also when USAs move on to other careers as judges, or back to the private sector. These changes are tolerated by the career people in the office and are often softened by the elevation of the First Assistant to serve in the interim who knows the office and can provide continuity. It would be detrimental to an office to absorb these changes too often. In the recent cases, where it may appear that USAs were forced out, in some cases in response to outside political pressure, there is clearly a negative impact on the morale of the USAOs across the country because suddenly it appears that DOJ is not willing to insulate the offices from such pressure. Where once the prosecutor thought that pursuing a powerful local politician or politically connected businessman might only expose him or her to some local and outside criticism/pressure, now the prosecutor must also contemplate that the subject or target of the investigation may actually be able to obtain the removal of the prosecutor. This is not a healthy environment for prosecutors who must make hard decisions based solely on the facts and the law, and not on the political implications. Such decisions smell unfair, and will have a predictable impact on the attitude and morale of everyone in the system. Firing a prosecutor for prosecuting the wrong person, or not prosecuting someone in the other political party, or for not timing an indictment around an election destroys the credibility that should be enjoyed by the department as a whole. It is difficult to regain that credibility. The professionals in the department are going to resent that because they earned that credibility. Finally, USAs do not make these decisions about cases and policy in a vacuum. Any successful USA is relying on the advice and counsel of as many of the career people in the office as is possible. While you can have a good USAO with a bad USA, and vice versa, it is fairly impossible to make public statements about the "performance" of a particular USA without implicating the performance of some or all of the career staff in the USAO who participated in the decision making and policy development within the office. The resentment will obviously be compounded where it is apparent that those criticisms have been fabricated to protect the true agenda and agenda makers behind the removals.
3. **Are you aware of any efforts to politicize the Department of Justice with respect to its personnel decisions?** Answer: I do not have any unique knowledge in this area. In other words, I only know what I have read in the newspaper.

4. **At the hearing, you mentioned that you had several telephone conversations with Michael Elston (DOJ) around the time that you were asked to resign.**

(a) **How many conversations did you have?** Answer: I think we had at least four.

(1) *First Call.* I called the DAG on or about January 19 after the AG testified in the Senate and left a message. He called back and left a message. I called back, the DAG was unavailable, and Mike Elston took the call saying the DAG asked him to see what I needed. I was calling to bring three things to their attention that I thought were all probably inadvertent misrepresentations that should and likely would be corrected. The first concerned a DOJ spokesman's statement to the press on or about December 26 stating that one reason Tim Griffin had been named as interim USA was because the First Assistant was on maternity leave. I told Elston that most people in our relatively small legal community had instantly mocked that statement because it was obvious Tim Griffin had been here for months for the purpose of taking over on my departure, because no person was aware of any conversations or other communications that might demonstrate that appointing the First Assistant was EVER a consideration, and because even though she actually had left the office a week before (on or about December 14) to give birth to twins, her due date was much later in early February and until she went out for an emergency delivery the week before she had been widely expected to continue to work in the office until February, so she actually could have been available for six weeks or more to serve as an interim had anybody ever considered that option. Nobody had and that was obvious. I told them it was a ridiculous thing to say in light of what many people here knew and that they shouldn't repeat it. Second, I told him that the AG had made two statements to the Senate Judiciary Committee that I thought were inconsistent with the facts. First, the AG had said that every change in USA spots had been made to improve the management in those districts. I knew or thought I knew that improving management had nothing to do with the change in my district, and I not only thought the statement was unfair to me, but also that it was going to be challenged because Senator Pryor knew better. I thought they might want to supplement the AG's testimony in a way to except my district. At that time I neither knew who else had been fired or why. Elston agreed with me that I had been fired simply to allow Tim Griffin to have the job. He assured me that the other cases were different and that if I knew the reasons behind those firings I would agree that "they had to go." He didn't know if they would ever be able to fix the record in regard to me, but he said he would see if they could avoid repeating similar statements in the future. Finally, I expressed concern that the AG's statement that

DOJ would seek a presidential nomination for the USA in every district was going to cause trouble here in Arkansas because it appeared to me that there was no intention to put Tim Griffin through a nomination. Elston rejected that notion and assured me that every replacement would have to be confirmed by the Senate. I told him if that was the case, then he had better gag Tim Griffin because Griffin was telling many people, including me, that officials in Washington had assured him he could stay in as USA pursuant to an interim appointment whether he was ever nominated or not. Elston denied knowing anything about anyone's intention to circumvent Senate confirmation in Griffin's case. He said that might have been the White House's plan, but they "never read DOJ into that plan" and DOJ would never go along with it. This indicated to me that my removal had been dictated entirely by the White House. He said Griffin would be confirmed or have to resign. I remember that part of the conversation well because I then said to Elston that it looked to me that if Tim Griffin couldn't get confirmed and had to then resign, then I would have resigned for nothing, and to that, after a brief pause Elston replied, "yes, that's right." [UPDATE: I saw in some of the documents that I may have placed a call to the DAG immediately before the AG testified in January. I frankly don't remember it that way, but it is possible that I was calling even then to express concerns based on the reporting I was seeing at the time on the issues described above.]

- (2) **Second Call.** I believe the second time I talked to Mike Elston was after the DAG testified in the Senate Judiciary Committee. The DAG testified that other USAs had been removed due to "performance" but he specifically admitted that had not been the case in Arkansas. Because Elston was skeptical in the first call that such a public statement would ever be made, I was pleased that the DAG had seen fit to correct the record in my case because I thought the AG's previous testimony had been misleading as to my case. I called to tell Mike Elston "thank you" and ask him to pass that sentiment on to the DAG. I think it was in that call that I also told him I had been contacted about testifying in Congress and had declined, but said that I would do it if DOJ wanted me to do it, and I thought I could minimize the drama related to my removal and also perhaps defend the notion that involving judges in the interim appointment process created unnecessary problems and that another "fix" should be found for the offensive Patriot Act provision. He took that offer under advisement. The tone of this call was positive, and my motivation in calling was to thank them and express to them that I had no hard feelings and hoped I was still considered to be a person of good

standing with the administration. At this point I had no reason to know they were not being truthful about the other USAs.

(3) ***Third Call.*** I am not certain, but I think the third call was one initiated by Mike Elston with Tasia Scolinos from DOJ OPA in the room with him on the speaker. They asked if I would be willing to write a letter to the editor in the Arkansas Democrat Gazette essentially vouching for Tim Griffin's credentials. Since I did want to be considered to still be on the "team", and because I did not have a problem with Tim Griffin's resume qualifications to serve as USA, I said I would consider it, but would have to discuss it with my wife first because she had some fairly strong feelings about Tim Griffin, the extent of his role in the decision to remove me, and the problems that seemed to be continually on the increase caused, at least in her view, by the inept way the matter was being handled at the time by persons she associated with Tim. Upon reflection after hanging up with Elston and Scolinos, it seemed to me that in spite of some public statements about nomination, there was no real commitment or intention evident that convinced me that there was any change in the intention regarding the nomination of Tim Griffin. In other words, I understood the plan to be that he would not be nominated, and in spite of the recent AG and DAG testimony, that plan had not changed. In addition, as predicted my wife was not comfortable with me writing the letter. I emailed Mike back and told him I wanted to wait until it was apparent that Tim Griffin would actually be nominated before I decided whether or not to write a letter.

(4) ***Fourth Call.*** The last call was the call that I testified about earlier on March 6 which came in response to a Washington Post article quoting me. He essentially said that if the controversy continued, then some of the USA's would have to be "thrown under the bus."

5. ***Other than Mike Elston, did you have phone conversations or email communications with any other high ranking DOJ officials regarding your dismissal or the dismissal of USAs? If so, who, when and what was the substance?***

Answer: Mike Battle called in June 2006 to tell me I had to resign. When I had difficulty reaching the DAG in January, I also put in a call to Bill Mercer. By the time he returned the call, I had already had an extensive conversation with Mike Elston (the "first call"). I didn't want to eat up Mercer's time repeating the same information, and so I think I told him I had been taken care of by Elston and probably gave him a very quick summary of the points I had made earlier with Elston. I don't have a clear memory of how much detail we went in to, or of any response he might have made. I think we congratulated each other regarding our service together as USAs. Mike Battle called me one time after I resigned, probably in early 2007 to relay some message to me either from a press person or

from a congressional person, and I don't remember which. It was basically a call to pass on a message. We chatted very briefly and Mike shared with me that he had plans to go into private practice.

6. **In the hearing, you testified that you sent an email to former USAs regarding the February 20, 2007 Elston phone call, what was their reaction and what follow up conversations have you had with them?** Answer: Their reaction was fairly uniform and it was that they were offended and viewed the statements made by Elston as a threat. One remarked, "What's next? A horse head in the bed?" I think we all viewed the "threat" to be that they would speak publicly about that which they had already spoken privately with Senators. From the limited information we had about those presentations, the justifications offered for the firings had been pretty lame, which was proved out later when Will Moschella presented the same allegations to the House Committee. The USAs in question have talked among themselves one to one on many occasions and we have had a number of conference calls from time to time to make sure everyone was up to speed on various developments. In regard to the Elston call, I think the common sentiment has always been that it had constituted a poorly veiled warning or threat. I didn't take it too seriously, because by that point, I frankly wasn't taking Elston himself too seriously as it appeared to me that he was intentionally trying to deceive me about the reason the other USAs were fired. I also did not know whether to believe his representation that he had no knowledge of the obvious intention to avoid senate confirmation in the Eastern District of Arkansas.
7. **Based on your knowledge and experience as a USA, what is your response to the reasons that William Moschella offered as the justifications for the dismissals of the USAs?** Answer: I was disappointed in Will Moschella and thought that many of the explanations were facially invalid. Based on information I already had, I believed additional justifications to be pre-textual and information learned later led me to believe the balance of his presentation was false, misleading and pre-textual. I found it remarkable that he could suggest that Carol Lam was fired over her immigration numbers and PSN numbers when DAG Comey had met with her and apparently blessed her PSN program and when DOJ had recently endorsed her immigration performance in a letter to Congress, and particularly when it was obvious that no one had even attempted to bring these supposed concerns to her attention before taking the unprecedented step of removing her. In regard to Paul Charlton, they seemed to be saying that he was being removed for having strong principled arguments against imposing the death penalty in one or more cases and that he had dared to argue with them. They also referenced an issue about taping FBI confessions that Charlton had raised with them in an entirely respectful and appropriate way. As far as I could tell, they didn't even really have a pretextual reason to remove Dan Bogden and

mumbled something about “new blood” or some such. They said David Iglesias wasn’t in the office enough and delegated too much. This was an outrageous thing to say for several reasons. First, David’s absence was due to Navy service in a time of war. The White House and DOJ knew of his Navy obligations when he was first appointed. Second, Bill Mercer, apparently or at least possibly one of the “deciders” who put Iglesias’s name on the list for removal, has been serving in Washington at main justice for several years while holding on to his appointment as the USA in Montana. I had read articles where his Chief Judge in Montana had been demanding a full time USA in his district for some time and had been roundly ignored. In short, I found every justification offered by Moschella to be false and misleading. Pure pretext. Even to the extent the substance was partially accurate, it was presented out of context. Had those firing decisions been made on those bases, it would have been incredibly poor management to do so without consulting the USA first. There was no evidence presented that those issues were credibly part of any legitimate performance review exercise of any kind. It was a bunch of hogwash, and Will either knew it, or should have known it based on his experience.

8. **During your tenure as USA, did a federal official ever contact you about a State Fee Privatization Investigation?** Answer: I presume this refers to the 2005-2006 Missouri investigation assigned to my district when the USAO districts in Missouri recused. If so, the short answer is “no.” Aside from some routine communication at the outset with DOJ regarding the recusals and the appointment itself, I do not remember ever being contacted by anyone in regard to this case except agents working the case, prosecutors in my office working the case, witnesses, and attorneys for persons involved or alleged to have been involved. I am not aware of any attempt to influence the investigation in any way. I was contacted by Bill Mateja on behalf of the Governor making what I considered to be legitimate inquiries into whether the investigation involved the Governor personally and if not, whether I would at any time be able to make a statement to that effect. I informed Mateja that I would stay in contact with him, and consider such a statement at the appropriate time, but was unable to discuss the matter while it was under investigation which he completely understood. Once the investigation was closed, I did write a letter and issue a brief statement regarding the Governor, which I believe was permissible under the provisions of the USAM.
9. **Please describe any awards, commendations or other performance related assessments you received during your tenure as USA.** Answer: We had two good EARS reviews in 2002 and 2006. Our numbers and other performance were very good in the priority categories and we may have received a letter or letters over time from the person in DOJ assigned to that priority initiative, or from the EOUSA

director commending our performance in one area or another, but I really don't recall and have no files upon which to rely.

10. **Did you ever receive a warning from the Justice Department that your office's priorities would result in your being asked to resign?** Answer: No. All input from DOJ was that our priorities locally were in line with national priorities.
11. **When Mike Battle called to ask you to resign, did he give an explanation? Did you discuss with any other DOJ official?** Answer: Since I was unaware of any USA ever being asked to resign by the appointing president absent misconduct, I was concerned that someone was alleging misconduct, so I asked Mike Battle if I had done anything wrong. He responded that it was just the opposite, that I had done a great job, and the decision was entirely about a desire by the White House to allow another person to serve as USA in my district. I took Mike at his word especially since he had recently visited my district, and had told me on a number of occasions since that we appeared to be doing quite well. Except for a brief call late in the year from Mike Battle to relay a phone message, and the previously discussed phone calls with Elston, Scolinos, and Mercer, I have never been contacted by any DOJ official about being asked to resign, the timing of my departure, the manner in which it would be explained to the staff or to the public, or about who would succeed me. I found it remarkable that no one saw fit to attempt to coordinate any of these issues. At some point, I began communicating with Tim Griffin, and he was obviously in constant communication to DOJ management through Monica Goodling and others. It appeared to me that Tim Griffin was also in contact with the White House. Anything I learned about any of the issues set out above I learned through communication with Tim Griffin. Not that I needed desired one, but it was curious to me that after five years of loyal and particularly successful service to the administration, I did not receive so much as a form letter from the AG or President or anyone else acknowledging, commending or appreciating that service. This was significant to me because it seemed inconsistent with the explanations that were floated in some quarters that these changes were being made to develop or credential the "bench" of Republicans in various districts. The manner they were dealing with me (or ignoring me) was not consistent with any high minded plan to expand the number of credentialed team members. I already was a credentialed team member. It looked like to me that whoever was pulling the strings in this particular plan had no regard or concern whatsoever for the people in the positions aside from getting them removed. There was no effort whatsoever to preserve their standing in the communities in which they served or to retain their loyalty or other service to the administration. My views in that area have certainly been reinforced by the subsequent demonstrations of willingness to slander the reputations of some or all of us simply to protect persons yet largely unidentified from having to explain embarrassing

issues and circumstances that obviously lead to these decisions. These circumstances paint a picture of a group of people acting not with the greater good of the Republican party in mind, but with a more selfish, self serving motivation along the lines of ingratiating themselves to the White House, to GOP congressional members, and party leaders, and also to clear some USA spots to be awarded to the staff level decision makers themselves, or their friends and "inner circle," perhaps ingratiating them to those people as well.

12. Did you ever have any conversations with Tim Griffin regarding the process that would be used to appoint him to be an interim USA in ED AR? If so, how many, what was the substance, who initiated each conversation, what was the method of communication, discuss with anyone else, by what method? Answer: These are difficult questions to answer because I have had a great number of communications with Tim by every mode of communication mentioned since June 2006, including several months when he was working in my office and I worked with him almost daily. I contacted Tim by email when he was in Iraq in June 2006 to advise him that Mike Battle had directed me to be ready to resign in favor of an unidentified person. I knew Tim intended to succeed me when I left, and assumed Tim or the White House or both had become impatient and was taking these steps in his favor. If that proved to be the case, I was resigned to accept the decision even though I found it somewhat insulting that they would presume to execute the plan in that way instead of simply consulting me and asking for my cooperation to afford Tim the opportunity. If I learned that it was some person other than Tim, I thought I might want to consider "pushing back" or somehow appeal the decision depending on the circumstances. When contacted, Tim professed to know nothing about the matter and said he had not been contacted. Several days or weeks later, he suggested that he had been sent paperwork related to the appointment, so from that point forward, I assumed he was the person in question and so I planned to quietly accept the decision and leave. Tim and I had fairly regular communication, mostly by email, some by phone, until he returned to the States from Iraq in late Summer. I had not yet determined where I would go professionally after resigning, and it appeared Tim would have a background check completed and be "ready" to come in as the new USA by sometime in late September or early October. For partly self serving reasons, I suggested to Tim that I was concerned about the appearance of my leaving without having a job and him coming in immediately to replace me because I thought some of the USAO staff might conclude that he had used his Washington political connections to have me knocked out of the way so he could have my job. I told him that even though I was not necessarily universally "loved and admired" in the USAO, that it was a close knit office and that any number of people there might resent such a perception thus hindering his ability to succeed in the office and potentially

having a negative impact on the work environment and morale of the office. I suggested as an alternative that he consider obtaining an appointment at main justice, and then a detail to our district, allowing him to get on down here to start transitioning into the job while I kept looking for a job. He thought that was a good option and sought and obtained permission from DOJ management and/or the White House to do it that way. I don't think at this time we had had any discussions about senate confirmation and may not have had any until he arrived in the office, I think around October 1 or shortly thereafter. When he arrived, I involved him in every management meeting or decision, including the interviews and hiring of three new AUSAs. This actually did offer a unique opportunity to prep him for taking over later in the year. At some point, and I don't really know when, I became aware that he had identified some resistance from Senator Pryor about getting through the Senate. I cannot recall specifics, but my impression was that whoever he was consulting in Washington was committed to his appointment no matter what, which mildly surprised me, because I had observed in the wave of appointments in 2001-2002 that the administration seemed unwilling and even skittish about pushing forward on any nomination after potential resistance or problematic issues appeared. It seemed during this time that Tim was waiting on a decision from DC about the possibility of a recess appointment, but I cannot recite any specific conversation we had about that. I just remember wondering if it meant I would have to leave during a recess. Sometime in early November, I determined that I was not willing to go to a law firm immediately and was interested in pursuing a number of business opportunities. It appeared that the process might drag on because I wasn't sure what direction I was going to take, so I offered to Tim that I would go ahead and resign and let Tim take over. He said that he was comfortable in the configuration we were in, and that he had a week-long vacation planned in early December, and if I didn't mind staying he would prefer to not accept the USA appointment and then leave town for a week, and instead thought it better to first take the trip and accept the appointment upon his return. Sometime in early December (I think), Tim called me and said "They are going to use the Patriot Act to appoint me." I have a fairly clear memory of that particular conversation. He said that there was a provision in the Patriot Act that nobody knew about that would enable them to appoint him in a way he could stay in place throughout President Bush's administration with or without Senate confirmation. I voiced a concern about the criticism such a plan might draw to the Patriot Act itself, which many of us had worked many days and weeks to defend and to get reauthorized. Over five years many of us had made serious representations about the necessity of the tools in the Patriot Act and had put our personal credibility on the line asking for the trust of the public and congress to give us those tools. I hated to see them use any part of the Act to "game the

system" because I thought it would "open up a can of worms" again over the whole Act. I don't remember any specific conversations on this subject, but I am sure it was referenced from time to time, and I don't remember ever hearing Tim or anyone else say anything after that inconsistent with a plan to install Tim using the provision of the Patriot Act where he would stay for the duration of the administration if necessary without Senate confirmation. I believe there was some discussion of monitoring Senator Pryor's mood on the issue and perhaps seeking confirmation at a later time. In regard to third parties Tim or I spoke to on these subjects, I mainly confided in the First Assistant, Jane Duke, and Cherith Beck, who served in the administrative area in the office and as my assistant. Very few others in the office knew I was being forced out or that Tim would succeed me, though over time it at least seemed apparent to most of them that he had come there for a reason. Jane and/or Cherith may have had some conversations of their own directly with Tim Griffin that were consistent with mine. I know Tim also had similar discussions about serving without Senate confirmation if necessary with many local people outside the USAO. It was my impression that he was telling a lot of people about this plan that stimulated my call to the DAG's office in January after the AG testified that a person would be 'nominated and confirmed in every district,' because it appeared to me that the plan was to only nominate and confirm Tim if the climate for success (mainly Senator Pryor's mood on the issue) ever looked more appealing.

- 13. Have you had communications with former USAO colleagues or agents concerning their assessments of Mr. Griffin's qualifications?** Answer: No, I have avoided that subject to a great extent because I do not want to be, or even appear to be, a critic of Mr. Griffin's, or do anything to injure his ability to be a successful USA. I also wouldn't want to hurt the office by contributing to or creating any morale problems that would hurt the office. So, I don't ask.

Second Set of Questions:

1. **When you were a USA, did DOJ take steps to assure that you understood you served at the will of the President?** Answer: Yes, I can't remember specifically, but I always knew that.
2. **Did you understand that you served at the will of the President?** Answer: Absolutely yes.
3. **Did you serve out the full, four year term of your appointment?** Answer: Yes I did, actually I served five full years, December 21, 2001 to December 20, 2006. If you ever asked anyone at DOJ about the meaning of the four year term, you would be told that it was really almost meaningless in light of the at will nature of the job and the customs of the Department. You served at the will of the President, so if he asked you to leave on the second week of your appointment, you would have to go. If the President lost reelection, and your term was not up, you could

still expect to be removed by the next President, especially if of the other party. On the other hand, as long as the President who appointed you was in office, there was no precedent for removal of you absent misconduct even after the four year mark came and went. Dismissal for misconduct had occurred in a very few cases of obvious misconduct, i.e. political activities within the office, assaulting a woman, etc. Of course, many USA's leave short of two terms to become judges or return to private practice. My wife would tell you that if DOJ intends to start making it a practice to remove folks at the four year mark, out of fairness they ought to tell you that on the front end because a lot of people would not choose to take a job you have to fill out thousands of forms for, submit to a background check by the FBI, submit to a Senate confirmation process that might be randomly delayed at the fancy of one or more Senators, and probably go without income in the process, and generally put your family through hell to take a job that might be taken away even if you are performing well.

4. *With regard to Mr. Timothy Griffin, who had previously served in your office, did you not write a letter to him on August 13, 2002, thanking him for his service to your office, complimenting him for indicting more people during his time in the office than any other AUSA, and telling him that his work was excellent?*

5. *Did you not also compliment Mr. Griffin for developing and launching PSN program for your district and state that the program in your USAO had been highly recognized and commended in a recent evaluation?* Answers to 4 and 5:

Tim asked me to write a positive letter for him after he left the USAO in 2002 and I did. I don't have a copy of it, so I don't know exactly what it said, but I do remember commending him for getting our PSN program off the ground and for indicting a lot of cases. It has come to my attention that some DOJ officials or members of Congress have stated that I called him my "right arm" or "right hand," presumably in that letter, but I do not recall writing such a statement or know exactly why I would have said that. Tim was (and is) a bright, energetic young man. Our PSN program started well because of Tim's efforts to set it up, and achieved great things for the four years after Tim left due to the efforts of virtually every person in the criminal division. I think in the letter I was probably guessing about the number of cases he indicted, but if we researched the question I think we would find that he indicted quite a few cases at least for several of the months he was there. That is certainly to be commended, but it is equally true that other prosecutors in the office inherited most of the cases and took them to trial or convictions after Tim left. If this question goes to Tim's objective qualifications to serve as a USA, I do not dispute that he is qualified. If it is intended to lock me in to some statement endorsing Tim's abilities, I have never criticized his abilities and don't intend to do so.